

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER COMPANY )  
)  
)  
PETITION FOR AN ORDER (1) CONCERNING )  
CLASSIFICATION OF ILLINOIS POWER )  
COMPANY'S TRANSMISSION AND )  
DISTRIBUTION FACILITIES AND (2) FOR )  
CERTAIN DETERMINATIONS IN )  
CONNECTION WITH THE SALE OF ILLINOIS )  
POWER COMPANY'S TRANSMISSION )  
SYSTEM TO ILLINOIS ELECTRIC )  
TRANSMISSION COMPANY, LLC. )

Docket No. 02-0743

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ILLINOIS  
COMMERCE COMMISSION

**PREPARED DIRECT TESTIMONY OF**  
**MICHAEL W. HASTINGS OF THE ASSOCIATION OF**  
**ILLINOIS ELECTRIC COOPERATIVES ON BEHALF OF**  
**CERTAIN ILLINOIS RURAL ELECTRIC COOPERATIVES AS INTERVENORS**

1 Q: Please state your name.

2 A: Michael W. Hastings.

3 Q: What is the reason for your appearance as a witness in this matter?

4 A: I am appearing as a witness on behalf of the intervening Illinois electric  
5 cooperatives to give testimony with respect to the sale by Illinois Power  
6 Company of certain of its transmission lines to Illinois Electric Transmission  
7 Company, LLC and at the same time, retention by Illinois Power Company of  
8 its "Large Line Corridor" rights associated with those transmission lines which  
9 "Large Line Corridor" rights were created by the service area agreements  
10 between Illinois Power Company and the intervening electric cooperatives.

1 Q: What is the nature of your occupation or profession?

2 A: I am an attorney at law employed as General Counsel for the Association of  
3 Illinois Electric Cooperatives (AIEC).

4 Q: How long have you served in that capacity?

5 A: I commenced my employment as General Counsel with the AIEC on December  
6 15, 1995.

7 Q: What is your formal training and education?

8 A: I graduated from high school at Hanston, Kansas, in 1978. I graduated cum  
9 laude from Kansas Wesleyan University with a B.A. degree in Accounting. I  
10 then obtained my law degree graduating with honors from Washburn University  
11 School of Law, in Topeka, Kansas.

12 Q: What has been your prior professional employment?

13 A: After graduation, I was employed by the law firm of Cosgrove, Webb and  
14 Oman, in Topeka, Kansas. In January 1989, I became counsel for the Kansas  
15 Department of Revenue and served for 2 years until January 1, 1991. On  
16 January 1, 1991, I began serving as Regulatory Compliance Specialist for the  
17 Kansas Electric Cooperatives, Inc. (KEC), in Topeka, Kansas. In May 1992, I  
18 was promoted to the position of Staff Counsel. I served in that capacity at the  
19 KEC until December 14, 1995. I then joined the Association of Illinois Electric  
20 Cooperatives (AIEC), as General Counsel in 1995 and have served in that  
21 capacity since then.

22 Q: What are your duties and activities as General Counsel for the AIEC?

1           A:    I provide general legal assistance with regard to a wide variety of cooperative  
2                legal issues that arise with respect to the member cooperatives of the AIEC. In  
3                addition, I serve as Executive Vice President and General Counsel for the  
4                Illinois Cooperative Workers Compensation Group, a self-insured workers  
5                compensation pool owned by the Illinois electric and telephone cooperatives. I  
6                also serve as Executive Vice President and General Counsel for Rochdale  
7                Services, Inc., a not-for-profit insurance services company serving electric and  
8                telephone cooperatives in Illinois and Pennsylvania. I am also responsible for  
9                planning and implementing regulatory compliance programs for electric and  
10              telephone cooperatives in Illinois.

11          Q:    Do you assist member cooperatives of the AIEC with respect to legislative  
12                matters?

13          A:    Yes. I assist with the AIEC's legislative program which is led by Don Woods,  
14                Vice-President of Government Relations for the AIEC. I was the primary  
15                author of the 1997 deregulation legislation as it was and is applicable to electric  
16                cooperatives and municipal systems in the State of Illinois and in addition, assist  
17                the cooperatives in complying with legislative and administrative rules and  
18                regulations applicable to Illinois member electric cooperatives.

19          Q:    What, if any, assistance do you provide as General Counsel of the AIEC to  
20                member electric cooperatives regarding territorial matters and service rights  
21                with competing electric suppliers such as Illinois Power Company and Central  
22                Illinois Public Service Company (CIPS)?

1 A: I provide general assistance and guidance to member electric cooperatives with  
2 regard to those territorial issues including issues that arise with respect to  
3 service area agreements entered into between Illinois electric cooperatives and  
4 electric suppliers such as Illinois Power Company pursuant to the Electric  
5 Supplier Act.

6 Q: Has this service historically been provided by the AIEC to its member  
7 cooperatives?

8 A: Yes.

9 Q: Are there business records of this activity by the AIEC?

10 A: Yes. Records of this nature are currently maintained in the regular course of  
11 business by the AIEC's Legal and Government Relations Department and prior  
12 to that, the records were kept in the regular course of business by the AIEC's  
13 Legal and Public Affairs Department. It is my obligation as General Counsel to  
14 oversee these records.

15 Q: Have you caused these records of the AIEC to be examined with regard to  
16 assistance provided by the AIEC to member electric cooperatives regarding  
17 negotiation of service area agreements with Illinois Power Company?

18 A: Yes.

19 Q: What did your search reveal?

20 A: The records reflect that the AIEC formed an Illinois Cooperative Power Supply  
21 Committee shortly after the adoption of the Illinois Electric Supplier Act, on  
22 July 2, 1965. The purpose of the Illinois Cooperative Power Supply Committee

1 was to assist Illinois electric cooperatives in dealing with other electric suppliers  
2 such as Illinois Power Company and Central Illinois Public Service Company  
3 (CIPS) in negotiating and drafting service area agreements authorized by the  
4 Electric Supplier Act. The Illinois Cooperative Power Supply Committee  
5 consisted of Stanley R. Faris, as Chairman, who was then Manager of Illinois  
6 Rural Electric Co., at Winchester, Illinois; Mr. Orval Foreman, an attorney at  
7 law; Leroy Hard, who was then manager of Monroe County Electric  
8 Cooperative at Waterloo, Illinois; Albert J. Cross, a staff attorney with the  
9 AIEC; and others.

10 Q: Who did the Illinois Cooperative Power Supply Committee report to?

11 A: The Committee reported directly to Earl Struck's predecessor, Thomas H.  
12 Moore, who was then General Manager of the AIEC.

13 Q: Did the Committee and/or Thomas H. Moore as General Manager of the AIEC  
14 maintain records of the Committee activities?

15 A: Yes. Records of the activities were maintained as a part of the business  
16 activities of the Committee. These records consist of periodic reports of the  
17 Committee activities and reports by the member cooperatives to the Committee  
18 concerning activities regarding ongoing Service Area Agreement negotiations.

19 Q: What general activities did the Committee undertake?

20 A: The Committee negotiated a model service area agreement on behalf of Illinois  
21 electric cooperatives with CIPS. In addition, the Committee provided support  
22 and assistance to the individual member cooperatives in their negotiations with

1 Illinois Power Company regarding service area agreements. As a result, reports  
2 were made by the member electric cooperatives to the Illinois Cooperative  
3 Power Supply Committee regarding the negotiations with Illinois Power  
4 Company. They also provided drafts of service area agreements, reviewed  
5 memorandum of discussions undertaken with regard to service area agreement  
6 negotiations, and the cooperatives' requested assistance with regard to the  
7 drafting of those service area agreements.

8 Q: Have you been able to obtain certain documents maintained by the AIEC as  
9 records of the activities by the Illinois Cooperative Power Supply Committee  
10 with respect to service area agreements negotiated between member electric  
11 cooperatives of the AIEC and Illinois Power Company?

12 A: Yes.

13 Q: What documents did you locate?

14 A: There are numerous reports from managers of member cooperatives together  
15 with correspondence between those cooperatives and Illinois Power Company.  
16 There are also memoranda of negotiating sessions between individual member  
17 cooperatives and Illinois Power Company regarding their respective service area  
18 agreement. In addition, copies of all the Service Area Agreements entered into  
19 between the member cooperatives and Illinois Power Company together with a  
20 record of the docket number at the Illinois Commerce Commission in which the  
21 Service Area Agreements between the member cooperative and Illinois Power  
22 Company were each approved by the Commission were assimilated by the

1 Committee and are maintained as a part of the AIEC business records.

2 Q: Have you caused a search to be made of the various documents maintained by  
3 the Illinois Cooperative Power Supply Committee regarding negotiations  
4 between member electric cooperatives and Illinois Power Company with respect  
5 to the issues in this docket regarding the "Large Line Corridor" provisions  
6 found in the various Illinois Power Company/Illinois electric cooperatives  
7 service area agreements?

8 A: Yes.

9 Q: Have those documents been attached to your prepared direct testimony as  
10 Exhibits 1-4?

11 A: Yes.

12 Q: Are those exhibits a true and correct copy of the documents each purport to  
13 represent and maintained by the AIEC as a part of its business records reflecting  
14 the activities of the Illinois Cooperative Power Supply Committee relative to its  
15 duties on behalf of member Illinois electric cooperatives during the negotiation  
16 of service area agreements with Illinois Power Company?

17 A: Yes.

18 Q: Have these documents represented by Exhibits 1 through 4 been prepared and/or  
19 maintained as a part of the regular business records of activities and duties of  
20 the Legal and Government Relations Department of the AIEC?

21 A: Yes.

22 Q: Did you cause to be prepared by the Graphics Arts Department of the AIEC a

1 map representing the transmission lines of Illinois Power Company as portrayed  
2 by Illinois Electric Transmission Company, LLC's Exhibit C in ICC Docket 02-  
3 0742 entitled "In re application of Illinois Electric Transmission Company, LLC  
4 for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406  
5 of the Public Utilities Act, to operate as a Public Utility, and for related  
6 approvals." and upon which map is shown the location of each electric  
7 cooperative in Illinois which includes the intervenors in this case?

8 A: Yes. The map was prepared at my direction based upon the information in  
9 Illinois Electric Transmission Company, LLC's Exhibit C in ICC Docket 02-  
10 0742 the AIEC records reflecting the location of each Illinois electric  
11 cooperative. Such map is attached to my testimony as Exhibit No. 5.

12 Q: Are you familiar with the petition that has been filed in this docket by Illinois  
13 Power Company as the same relates to service area agreements between Illinois  
14 Power Company and Illinois electric cooperatives who have intervened in this  
15 case?

16 A: Yes.

17 Q: What issues have been raised by Illinois Power Company in this docket relative  
18 to the service area agreements between the intervenors and Illinois Power  
19 Company?

20 A: The petition generally involves the sale of certain transmission lines of Illinois  
21 Power Company to Illinois Electric Transmission Company, LLC and a request  
22 by Illinois Power Company to retain its "Large Line Corridor" rights



1 established in each of those agreements to allow Illinois Power Company to  
2 continue to serve certain customers that may locate within the so called "Large  
3 Line Corridor" created by transmission lines running through what otherwise  
4 was and is designated by the service area agreement as being service territory to  
5 be served exclusively by the particular Illinois electric cooperative.

6 Q: What issue does this request by Illinois Power Company to retain "Large Line  
7 Corridor" rights after disposing of all interest in the transmission lines upon  
8 which those corridor rights are premised create for the electric cooperatives that  
9 have intervened?

10 A: The "Large Line Corridor" rights created in the respective service area  
11 agreements were negotiated between Illinois Power Company and the respective  
12 intervening cooperatives and provided service rights to Illinois Power Company  
13 in what was otherwise territory designated to be served by the Cooperative.

14 Q: Did you search the business records of the Legal and Government Affairs  
15 Department to locate documents that may reflect upon the negotiations that  
16 occurred between Illinois electric cooperatives as members of the AIEC and  
17 Illinois Power Company with respect to these service area agreements?

18 A: Yes.

19 Q: Did you locate such documents?

20 A: Yes. Those documents that I located which pertain to the "Large Line  
21 Corridor" provisions of certain of the service area agreements between Illinois  
22 Power Company and Illinois electric cooperatives as members of the AIEC are

1 attached to my prepared direct testimony as Exhibits 1 through 4.

2 Q: Have you reviewed those documents?

3 A: Yes.

4 Q: What did you find upon reviewing those documents?

5 A: With respect to the Illinois Power Company negotiations with the member  
6 Illinois electric cooperatives of the AIEC the documents revealed that the  
7 negotiations between Illinois Power Company and the individual electric  
8 cooperatives were conducted separately. However, the individual electric  
9 cooperatives reported their negotiations together with the content of those  
10 negotiations and the service area agreements themselves to the AIEC acting  
11 through its Illinois Cooperative Power Supply Committee which had been  
12 established to assist all member cooperatives in negotiating those service area  
13 agreements with Illinois Power Company as well as with CIPS. These service  
14 area agreements were authorized as a result of the Illinois Electric Supplier Act  
15 adopted by the Legislature July 2, 1965. These negotiations took place  
16 subsequent to July 2, 1965 and continuing through the 1970's.

17 Q: Did the records maintained by the AIEC and its Illinois Cooperative Power  
18 Supply Committee contain documents with respect to each service area  
19 agreement between Illinois Power Company and Illinois electric cooperatives?

20 A: Yes. The Illinois Cooperative Power Supply Committee acting on behalf of the  
21 AIEC maintained a copy of all service area agreements between Illinois electric  
22 cooperatives as members of the AIEC and Illinois Power Company together

1 with a copy of the Illinois Commerce Commission docket wherein the original  
2 agreement was approved. In addition, the documentation includes letters from  
3 both the member cooperatives as well as Illinois Power Company and  
4 memoranda of negotiations concerning the provisions of the service area  
5 agreements.

6 Q: Were you able to locate documentation which discussed the "Large Line  
7 Corridors" as those provisions are found in the typical Illinois Power Company  
8 and Illinois electric cooperative service area agreement which "Large Line  
9 Corridors" are the subject of this docket?

10 A: Yes. All of the service area agreements between Illinois Power Company and  
11 the Illinois electric cooperatives that are intervenors in this case contain "Large  
12 Line Corridor" provisions and each of those "Large Line Corridor" provisions  
13 are generally identical. The "Large Line Corridors" are usually defined as an  
14 area one-fourth mile on either side of a "high voltage line", which is defined in  
15 each service area agreement and which line was energized on July 2, 1965 and  
16 owned by one of the parties to the agreement. The agreements generally  
17 provide that a "high voltage line" is a line of 34.5 kV or higher except that the  
18 Agreement with Menard Electric Cooperative and Spoon River Electric  
19 Cooperative, Inc. defines the "high voltage line" as a line of 69 kV or higher.  
20 In addition, the Agreements generally provide that any "new customer" whose  
21 point of delivery is located within the "Large Line Corridor" and whose demand  
22 for electric service in the first 12 months following completion of construction

1 for the customer is estimated to be at or above a certain level specified by that  
2 particular service area agreement should be served by the party owning or  
3 entitled to operate from the "high voltage line". There is some difference in the  
4 Agreement with Corn Belt Energy Corporation in that the Agreement provides  
5 that the "new customer" shall be served by "the party owning or entitled to use  
6 or operate from the high voltage line" and the Agreement with Monroe County  
7 Electric Cooperative, Inc., provides that the "new customer" whose point of  
8 delivery is in the "Large Line Corridor" and whose demand equals or exceeds a  
9 stated level will be served by Illinois Power, but that the service must be  
10 provided by the line located within the "Large Line Corridor". Otherwise, the  
11 "Large Line Corridor" provision of the service area agreements between Illinois  
12 Power Company and the intervenors are generally the same.

13 Q: Are copies of each of the service area agreements between Illinois Power  
14 Company and the intervening cooperatives exhibits in this docket?

15 A: Yes. They are identified as Illinois Power Company Exhibits 5-13 of the  
16 Petition in this Docket.

17 Q: What, if any, information and/or documents among the records of the AIEC did  
18 you find which reflected upon the purpose or reasons for the "Large Line  
19 Corridor" provisions?

20 A: Attached as Exhibit 6 to my testimony are a series of documents from the AIEC  
21 Illinois Cooperative Supply Committee records consisting of: (a) a memorandum  
22 of a negotiating session held January 12, 1967 between the Committee and

1 Central Illinois Public Service Company (CIPS); (b) a letter dated February 27,  
2 1967 from CIPS to the Committee Chairman; and (c) a letter dated February 5,  
3 1982 from CIPS counsel to AIEC counsel regarding the aforementioned January  
4 12, 1967 meeting memorandum and February 27, 1967 letter, both of which  
5 reveal that the "Large Line Corridors" became an issue as a result of the  
6 decision entered October 26, 1966 by the Illinois Commerce Commission in  
7 Menard Electric Cooperative vs Central Illinois Public Service Company ESA  
8 13, a copy of the Commission order being attached to my prepared testimony as  
9 Exhibit No. 7. This decision determined that the transmission line owned by  
10 CIPS would not be practical for providing three phase electric service to a new  
11 customer locating close to the transmission line and requiring service from a  
12 three-phase 12.5 kV line. As a result of that decision, communications to the  
13 Illinois Cooperative Power Supply Committee by CIPS noted that in order to  
14 preserve the rights of the owner of those transmission lines, "Large Line  
15 Corridors" were a necessary provision of the service area agreements. Thus,  
16 historically, the "Large Line Corridor" provisions became a standard provision  
17 of the service area agreements negotiated between both Illinois Power Company  
18 and CIPS with the Illinois electric cooperatives.

19 Q: What, if any, information did you obtain from the Exhibits marked 1 through 3  
20 attached to your Prepared Testimony pertaining to the "Large Line Corridor"  
21 provisions in the agreements between the Illinois cooperatives and Illinois  
22 Power Company?

1           A:     The attached Exhibit No. 1 consisting of a letter dated October 21, 1974, from  
2                   Illinois Power Company to Mr. Leroy V. Hard, who was Manager of Monroe  
3                   County Electric Cooperative, Inc., and also a member of the Illinois  
4                   Cooperative Power Supply Committee of the AIEC, provides an explanation as  
5                   to the purpose of the "Large Line Corridors" in the service area agreements  
6                   with Illinois Power Company. At the time, Monroe County Electric  
7                   Cooperative, Inc. was negotiating with Illinois Power Company with respect to  
8                   a service area agreement. These negotiations were monitored by the AIEC and  
9                   reports from Mr. Hard were provided to the AIEC and its Illinois Cooperative  
10                  Power Supply Committee regarding these negotiations. As a result, the  
11                  document attached as Exhibit 1 was provided to the AIEC which has been  
12                  maintained as part of the records concerning the activities and functions of the  
13                  Illinois Cooperative Power Supply Committee acting on behalf of the AIEC in  
14                  those negotiations.

15          Q:     What, if anything does Exhibit 2 and Exhibit 3 reveal with respect to the  
16                   negotiations regarding the "Large Line Corridor" provisions?

17          A:     Exhibit 2 and Exhibit 3 consist of memorandums dated April 8, 1976, and June  
18                   30 through July 1, 1976 respectively of negotiating sessions between Monroe  
19                   County Electric Cooperative Inc. and Illinois Power Company. These  
20                   memorandums reveal that the "Large Line Corridors" were part of the overall  
21                   negotiations. Each side negotiated with respect to the size of the corridor  
22                   together with the size of loads that would be affected by the corridor provisions.

1 Basically, as noted in the attached Exhibit 2 and Exhibit 3, the parties  
2 compromised their respective positions with respect to the various terms of the  
3 "Large Line Corridor" provisions found in the agreements. It must be  
4 remembered that the "Large Line Corridors" are located in territory otherwise  
5 agreed by the particular cooperative and Illinois Power Company as being the  
6 exclusive service area of that Illinois electric cooperative. The fact that  
7 negotiations ensued regarding the terms of the "Large Line Corridors" is  
8 revealed by page 2 of a letter dated July 1, 1975 and attached to my Prepared  
9 Testimony as Exhibit 4 that was between Leroy V. Hard as Manager of Monroe  
10 County Electric Cooperative, Inc., and William E. Dean, Director of Power  
11 Supply for the AIEC in which the corridor concept is discussed along with the  
12 concept of 34.5 kV lines being classified as distribution lines. Those  
13 negotiations generally included not only the width of the corridor but the size of  
14 loads to be governed by those provisions. The overall "Large Line Corridor"  
15 concept was a part of the total negotiations between the Illinois electric  
16 cooperatives and Illinois Power Company with respect to the service area  
17 agreements.

18 Q: What is the position of the AIEC and the Intervenors in this matter with regard  
19 to the right of Illinois Power Company to retain its "Large Line Corridor"  
20 rights with respect to lines sold to Illinois Electric Transmission Company  
21 L.L.C.?

22 A: The position of the AIEC and the Intervenors is that the granting of the corridor

1 rights to Illinois Power Company in what was agreed by the parties to be the  
2 exclusive service area of the cooperatives was based upon ownership of the lines  
3 by the Illinois Power Company and the fact that Illinois Power Company as  
4 owner desired service rights to be determined based on the proximity provisions  
5 of Section 8 of the Illinois Electric Supplier Act found at 220 ILCS 30/8. In  
6 view of the then recent decision of the Illinois Commerce Commission in ESA  
7 13 determining that service is impractical from transmission lines to loads not  
8 requiring transmission line voltage, the "Large Line Corridor" became a  
9 negotiated element of the agreements. If the lines were not owned by Illinois  
10 Power Company the "Large Line Corridors" would not have been agreed to by  
11 the Cooperatives. Thus, if ownership of the high voltage lines creating the  
12 "Large Line Corridors" is terminated the "Large Line Corridor" rights should  
13 also terminate. In effect the consideration for the cooperative to agree to Illinois  
14 Power Company retaining such rights has now ceased to exist.

15 Q: Does this conclude your prepared testimony?

16 A: Yes.

17  
18 Michael W. Hastings.  
19



**PROOF OF SERVICE**

I, JERRY TICE, hereby certify that on the 20 day of December, 2002, I deposited in the United States mail at the post office at Petersburg, Illinois, postage fully paid, a copy of the document attached hereto and incorporated herein, addressed to the following persons at the addresses set opposite their names:

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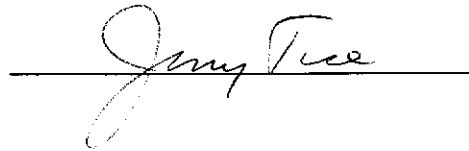
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A handwritten signature in cursive script, reading "Jerry Tice", is written over a horizontal line.

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